

**NO. PD-0546-20**

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**IN THE  
TEXAS COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS**

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FILED  
COURT OF CRIMINAL APPEALS  
8/10/2020  
DEANA WILLIAMSON, CLERK

**KEDREEN MARQUE PUGH,  
*Respondent-Appellant*  
v.  
THE STATE OF TEXAS,  
*Petitioner-Appellee***

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**On the State's Petition for Discretionary Review From The  
Fourth Court of Appeals, San Antonio Texas  
Appellate Cause No. 04-19-00516-CR**

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**Appealed From a Judgment of Conviction From the 187th Judicial District  
Court Of Bexar County, Texas  
Trial Court Cause No. 2018-CR-6053**

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**STATE'S PETITION FOR DISCRETIONARY REVIEW**

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**ORAL ARGUMENT NOT REQUESTED**

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**NO. PD-0546-20**

<b>KEDREEN MARQUE PUGH,</b>	§	<b>IN THE TEXAS COURT OF</b>
<b>RESPONDENT-APPELLANT</b>	§	
	§	
<b>Vs.</b>	§	<b>CRIMINAL APPEALS</b>
	§	
<b>THE STATE OF TEXAS,</b>	§	
<b>PETITIONER-APPELLEE</b>	§	<b>AUSTIN, TEXAS</b>

**STATE’S PETITION FOR DISCRETIONARY REVIEW**

To the Honorable Court of Criminal Appeals:

Now comes Joe D. Gonzales, Criminal District Attorney of Bexar County, Texas, by and through the undersigned Assistant Criminal District Attorney, and respectfully urges this Court to grant discretionary review.

**STATEMENT REGARDING ORAL ARGUMENT**

The State does not request oral argument in the instant case.

**STATEMENT OF THE CASE**

After Pugh’s motion to suppress was denied at trial, he was found guilty of possession with intent to deliver a controlled substance PG 1 4 grams to 200 grams. CR at 90. The court of appeals reversed, finding that the trial court should have suppressed Pugh’s statement because of an alleged *Miranda* violation.

**STATEMENT OF PROCEDURAL HISTORY**

The court of appeals reversed the trial court’s decision not to suppress evidence in an unpublished opinion. *Pugh v. State*, No. 04-19-00516-CR, 2020 WL

1866289 (Tex. App.—San Antonio, Apr. 15, 2020) (not designated for publication).

On May 20, 2020, the court of appeals denied the State’s motion for rehearing.

(Appendix B) This Court granted an extension of time to file this petition by August 3, 2020.

### **GROUND FOR REVIEW**

GROUND ONE: Does a single clarifying question by a police officer in response to a defendant’s spontaneous, voluntary statement constitute custodial interrogation for the purposes of *Miranda*?

GROUND TWO: Even if the answer to the officer’s question was inadmissible, the court of appeals erred in factoring admissible evidence, including the defendant’s initial volunteered statement and the fruit of the un*Mirandized* statement, into its harm analysis.

## ARGUMENT

### Background

#### *Officers' Actions*

Kedreen Marque Pugh, Appellant at the court of appeals, was apprehended pursuant to a warrant. (3 RR at 22, 24, 26, and 36-37) After Pugh's apprehension, San Antonio Police Department officer Johnny Lopez and his partner arrived to transport Pugh to SAPD headquarters. (3 RR at 84, 86, and 88) Detective Joe Rios agreed to let Pugh's wife come pick up the vehicle he was driving at the time of his arrest. (State's Exhibit A at 7:28-8:31)<sup>1</sup> After Lopez left with Pugh, Rios drove the vehicle to a nearby gas station, without searching it, to wait for Pugh's wife. (3 RR at 41-44 and 55-56)

#### *Pugh's Statements*

After Pugh's arrest but before he was placed in Lopez's patrol vehicle, Pugh repeatedly asked officers two things—first, for details about his arrest and second, if they could contact his wife about the car. (State's Exhibit A at 5:20-6:30) After Pugh was placed in Lopez's vehicle, Rios asked Lopez for Pugh's wife's phone number and Pugh said, "sir, sir, can I tell you something." (State's Exhibit A at 7:29-

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<sup>1</sup> Because the trial court watched State's Exhibit A in order to make its ruling on the motion to suppress, the State cites to this exhibit in its petition. All time stamps refer to the time when the exhibit is played in Windows Media Player.

7:37) Lopez, however, interrupted Pugh to get the requested information and did not follow up on Pugh's statement. (State's Exhibit A at 7:38-8:31)

After Lopez provided Rios with information to facilitate pick-up of Pugh's vehicle, Lopez told Pugh that Rios would contact his wife and did not discuss anything else with him. (State's Exhibit A at 8:32-10:00) Instead, Pugh initiated conversation with Lopez by asking about the warrant and then discussed what he had been doing prior to his arrest. (State's Exhibit A at 10:00-11:10)

After a lull in conversation, Pugh and Lopez had the following exchange—

Pugh: Officer...

Lopez: Yes sir?

Pugh: Hey, I'm gonna be honest, sir. I—I got stuff in the car, man.

Lopez: What you got in the car?

Pugh: I got drugs in the car and I got a small handgun.

(State's Exhibit A at 11:10-11:19) Lopez did not ask Pugh any other questions.

(State's Exhibit A at 11:20-12:05) Lopez relayed the information to Rios and Rios responded, "10-4, on COBAN,<sup>2</sup> res gestae?" (State's Exhibit A at 12:05-12:22) Pugh then asked if officers had found the gun and drugs "yet" and subsequently asked if they had a warrant. (State's Exhibit A at 12:22-12:34) For the remainder of the car

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<sup>2</sup> COBAN is the in-car video recording system used by SAPD. At trial, the State introduced the recordings of the statements made pursuant to Lopez's body-worn camera and not the in-car recording system. (3 RR at 86-88)

ride, Pugh engaged officers in other conversation, but mentioned nothing else about contraband and officers asked no other questions. (State's Exhibit A at 12:35-39:12)

### *Trial and Appellate Proceedings*

A jury subsequently convicted Pugh of possession with intent to deliver a controlled substance PG 1 4 grams to 200 grams. (4 RR at 55-56 and CR 90) At trial, Pugh moved to suppress the statement he made about the contents of the vehicle and the trial court denied the motion. (CR at 5, 3 RR at 5-13, and 4 RR at 5-9) The court of appeals reversed Pugh's conviction finding that his statement regarding the contents of the vehicle should have been suppressed due to a *Miranda* violation.

### Discussion

The court of appeals's holding incorrectly concludes that Lopez's follow-up question to Pugh constituted interrogation for purposes of *Miranda*. Lopez's question only sought to clarify information volunteered by Pugh and as such was not custodial interrogation. Further, the court of appeals's conclusion is not supported by the application of the "should know" test to determine whether police questioning constitutes interrogation under *Miranda*.

### *Custodial Interrogation*

"The *Miranda* rule generally prohibits the admission into evidence of statements made in response to custodial interrogation when the suspect has not been advised of certain warnings." *State v. Cruz*, 461 S.W.3d 531, 536 (Tex. Crim. App.

2015) (internal citations omitted). However, “not all statements obtained by the police after a person has been taken into custody are to be considered the product of interrogation.” *Rhode Island v. Innis*, 446 U.S. 291, 299, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). As such, the “special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation.” *Id.* at 300, 100 S.Ct. 1682.

Interrogation within the context of *Miranda* means ““any words or actions on the part of the police... that the police should know are reasonably likely to elicit an incriminating response.” *Cruz*, at 536 (citing *Innis*, 446 U.S. at 300-01, 100 S.Ct. 1682). This “should know” test is evaluated from the suspect’s perception and not police intent. *Id.* at 536-37 (citing *Innis*, 446 U.S. at 301, 100 S.Ct. 1682). “This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police.” *Innis*, 446 U.S. at 301, 100 S. Ct. 1682.

Thus, any practice which an officer should know is reasonably likely to elicit an incriminating response from a suspect is considered interrogation. *Id.* “But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to

elicit an incriminating response.” *Id.* at 301–02, 100 S. Ct. 1682 (emphasis in original).

As a preliminary matter, Pugh’s initial statement that he “had stuff in the car,” was voluntary and uncontested at trial. Rather, Pugh sought only to suppress his second statement wherein he told Lopez that he had a “drugs” and a “small handgun” in the car. (3 RR at 5-13, and 4 RR at 5-9) Accordingly, only the admissibility of the second, contested statement was addressed by the court of appeals.

In examining the admissibility of the contested statement, the court of appeals incorrectly held that it should have been suppressed. Here, Lopez’s single, clarifying question in response to Pugh’s volunteered statement does not constitute “interrogation” under *Miranda*. As this Court has recognized, “not all questions that an officer might ask a suspect who is in custody will trigger the *Miranda* requirements.” *Batiste v. State*, No. AP-76,600, 2013 WL 2424134, at \*14 (Tex. Crim. App. June 5, 2013) (not designated for publication). Other courts have similarly recognized that the following conversations did not constitute custodial interrogation for purposes of *Miranda*—

1. where a police officer asked a defendant, who was arrested on a warrant, “whose stuff is this?” and she admitted to possession of stolen checks. *State v. Barnes*, 54 N.J. 1, 6, 252 A.2d 398, 401 (N.J. 1969);
2. where, after a defendant stepped out from behind the bushes, an officer asked “What are you doing back here?” to which the defendant responded “We were trying to break into that store.” *People v. Huffman*, 41 N.Y.2d 29, 32-34, 359 N.E.2d 353, 356-57 (N.Y. 1976);

3. where a defendant initiated a conversation with a detective by stating “How would you like it?” and a detective asked “What do you mean by that?” to which the defendant responded that he had shot his wife. *State v. Lamb*, 213 Neb. 498, 502-03, 330 N.W.2d 464, 465-66 (Neb. 1983).
4. where a defendant told an agent who was searching his house that he could not take a notebook and when the agent inquired as to why, the defendant stated that the notebook was necessary for his business. *United States v. Rhodes*, 779 F.2d 1019 (4th Cir. 1985);
5. where a deputy asked a defendant if he knew why he had been arrested and brought to the station to which the defendant responded, “Yes, I killed Mr. Hammons.” *Colbert v. State*, 654 P.2d 624, 628-29 (Okla. Crim. App. 1982);
6. where, after officers found narcotics and a weapon and the defendant boasted that he had made officers “work for that s—,” an officer inquired further and the defendant clarified that he was referring to “the coke and the gun.” *United States v. Gonzales*, 121 F.3d 928, 939-40 (5th Cir. 1997);
7. where a defendant spontaneously admitted to “stab[ing] her” and police further inquired “Who?” after which the defendant identified the victim. *Andersen v. Thieret*, 903 F.2d 526, 531-32 (7th Cir. 1990);
8. where a defendant stated he wanted to “make a massacre,” and the police chief asked “What do you mean, a massacre?” and defendant replied “I wanted to kill everyone in the family including my father-in-law and brother-in-law.” *State v. Simoneau*, 402 A.2d 870, 873-75 (Me. 1979); and
9. where, after a voluntary call with a detective wherein a defendant offered to turn himself in, the defendant arrived at the police station and a detective asked where the murder weapon was. *Smith v. State*, 264 Ga. 857, 858-59, 452 S.E.2d 494, 496-497 (Ga. 1995).

In each of these cases, officers’ reflexive or clarifying questions asked in response to defendants’ ambiguous or voluntary statements were found not to be the functional equivalent of interrogation—even where it appeared that the defendant

was referencing potentially criminal conduct. Here, Lopez’s neutral, follow-up inquiry in response to Pugh’s vague, volunteered statement that he “had stuff in the car” is likewise a clarifying question that is not custodial interrogation.

Moreover, the court of appeals held that because Pugh volunteered that he was going to be “honest” and that he had “stuff in the car,” Lopez should have known that Pugh was likely to make an incriminating statement. *Pugh*, 2020 WL 1866289, at \*2. In arriving at its conclusion, the court of appeals relied only on the language used by Pugh to support its contention. However, when evaluating all of the circumstances preceding Pugh’s contested statement under the objective “should know” test, the record does not support the appellate court’s finding.

From Pugh’s standpoint, nothing in the record indicates that Lopez asked the question to solicit an incriminating statement or in an attempt to bypass *Miranda*. Prior to making the contested statement, Pugh’s interactions with officers were not indicative of any concern beyond his arrest and what would happen to the vehicle. In fact, before Pugh made the statement, he was discussing mundane topics with Lopez—including the yard work he completed prior to his arrest.

Further, the evidence demonstrates that Pugh wanted to unburden himself regarding the illegal contents of the vehicle without questioning from Lopez. Pugh tried to tell Lopez something at the start of the car ride, saying “sir, sir, can I tell you something,” which Lopez ignored. Later, during a lull in the conversation, Pugh

initiated the interaction which led to the contested statement. Pugh likewise used the word “stuff” to describe what was in his wife’s car—a vague term which could have referred to a number of legal items, such as medicine or another item he needed after his arrest. Based on Pugh’s behavior and communications with the officers, then, it is not reasonable for Pugh to assume that Lopez was interrogating him as to criminal conduct after he volunteered that he had “stuff” in the car.

It is similarly not reasonable to conclude, from Lopez’s standpoint, that he was interrogating Pugh. The record demonstrates Lopez never articulated any suspicion that the vehicle contained contraband or that Pugh was committing an offense independent of being wanted on the warrant. Instead, Lopez explicitly stated that his only job was to transport Pugh downtown. *See Batiste*, 2013 WL 2424134, at \*14) (“While Sgt. Gore’s subjective intent is not dispositive in an *Innis* ‘interrogation’ analysis, it does shed some light on the situation to the extent it was communicated.”). Moreover, Lopez’s only questions to Pugh (and Pugh’s repeated concern) were related to pick-up of the vehicle by Pugh’s wife. Based on Pugh’s prior statements and Lopez’s role solely as the transport officer, it was not immediately clear that Pugh was offering up information regarding something illegal or that Lopez was interrogating him regarding same.

Also, Lopez never questioned Pugh after Pugh volunteered to tell him something at the beginning of the transport. Instead, Lopez simply asked for Pugh’s

wife's phone number and radioed it to Rios without following up on Pugh's statement to "tell him something." Further, once Lopez clarified what Pugh had in the car, he ceased questioning Pugh. Thus, the record does not support a finding that Lopez's single, clarifying question in response to Pugh's ambiguous statement regarding the contents of the vehicle constituted "interrogation." Accordingly, the court of appeals erred in concluding that, under these facts, "what you got in the car" would be interpreted as a coercive inquiry into potentially illegal activity or as an effort to sidestep the requirements of *Miranda*.

*Admissibility of Evidence After an Alleged Miranda Violation*

The court of appeals also misapplied the harm analysis in the instant case. The court of appeals held that "the erroneous admission of Pugh's statement likely was a contributing factor in the jury's deliberations in arriving at a guilty verdict," resulting in harm. *Pugh*, 2020 WL 1866289 at \*3. In arriving at its conclusion, the court of appeals relied on three facts—first, that the statement led to the search of the car; second, that two of the three witnesses at trial testified to the statement, and finally, that the State repeatedly referred to the statement as evidence during closing argument. *Id.*

Even assuming the facts established that Lopez should have known that his single, clarifying question was likely to elicit an incriminating response from Pugh, the court of appeals's holding ignores that Pugh's initial statement that he had

something in his car was volunteered. Accordingly, that evidence cannot be included in the court's harm analysis—as it was properly admitted before the jury, relied upon during its case-in-chief, and discussed during closing argument.

Further, the court of appeals's harm analysis is contrary to applicable case law which holds that the fruits of an un*Mirandized* search are still admissible. While a “mere violation” of *Miranda* requires that the statement taken in violation of *Miranda* be suppressed, absent coercion, “other evidence subsequently obtained as a result of that statement (i.e. the ‘fruits’ of the statement) need not be suppressed.” *Baker v. State*, 956 S.W.2d 19, 22 (Tex. Crim. App. 1997) (internal citations omitted). Here, the court of appeals misapplied the harm standard in concluding that admission of Pugh's contested statement sufficiently harmed him to necessitate reversal.

Assuming that evidence of Pugh's contested statement should have been excluded, the jury would have heard that—

1. Rios was doing surveillance on Pugh as he was wanted on a warrant;
2. Pugh was stopped driving a gray Impala;
3. Pugh was arrested on the warrant;
4. Lopez arrived to transport Pugh downtown;
5. Pugh repeatedly asked if his wife could pick up the vehicle and officers agreed;

6. Rios drove Pugh's vehicle to a gas station to wait for Pugh's wife and testified that he had no intention to search the vehicle;
7. Pugh volunteered that he "had stuff in the car;"
8. Pugh's vehicle was searched;
9. Rios found a handgun and a brown, tarlike substance in the vehicle; and
10. The substance was tested by an analyst from the Bexar County Crime Lab and determined to be 9.937 grams of heroin.

(3 RR at 25-30, 34-37, 40-44, 55-61, 67-69, 74-76, 83-84, and 88-90, 4 RR at 13, 19-20 and 27-28, and State's Exhibit 3:50-11:15)

In light of the above evidence and the inferences which a rational jury could make from same, the statement about exactly what was in the car would have had little bearing on the ultimate issue of guilt. Without the contested statement there was still sufficient evidence—that Pugh was driving the vehicle at the time of his arrest, that he voluntarily offered that he had "stuff" in it, and that Rios found a handgun and drugs in the vehicle—on which a rational jury could have convicted him of possession with intent to deliver a controlled substance. Because even under the court of appeals's reasoning, the initial statement, the handgun, and the narcotics were still admissible at trial, the court of appeals gave improper weight to the contested statement in concluding that its admission harmed Pugh.

**PRAYER**

The State of Texas prays that the Court of Criminal Appeals grant this petition to consider both issues and reverse the court of appeals, or in the alternative, to summarily remand to the court of appeals.

Respectfully submitted,

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*/s/ Jennifer Rossmeier Brown*

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**CERTIFICATE OF SERVICE AND COMPLIANCE**

I, Jennifer Rossmeier Brown, hereby certify that the total number of words in the State's petition is 3,703. I also certify that a true copy of the above was served on the following on August 3, 2020, in the manner described below:

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# **APPENDIX A**



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-19-00516-CR

Kedreen Marque **PUGH**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 187th Judicial District Court, Bexar County, Texas  
Trial Court No. 2018CR6053  
Honorable Stephanie R. Boyd, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: April 15, 2020

**REVERSED AND REMANDED**

Kedreen Marque Pugh was convicted by a jury of possession of a controlled substance with intent to deliver. On appeal, Pugh challenges the trial court's denial of his motion to suppress and the admission of a firearm into evidence. Because we hold the trial court erred in denying the motion to suppress Pugh's statement, we sustain Pugh's first issue, reverse the trial court's judgment, and remand the cause to the trial court for further proceedings consistent with this opinion.

## BACKGROUND

Pugh was arrested by a task force on an outstanding murder warrant while driving his wife's vehicle. After he was arrested and handcuffed, Pugh was placed in the back of a marked patrol vehicle to be transported to police headquarters by uniformed officers Johnny Lopez and Troy Thompson. The transporting officers were in contact with officers at the scene of the arrest as Pugh provided information necessary for his wife to pick up her car. Detective Joe Rios, who led the stop and arrest, drove the car from the highway access road to a gas station, but did not undertake any search of the car. Instead, he intended to allow Pugh's wife to pick up the car.

A few minutes after Pugh was driven from the scene of the arrest, the following exchange occurred:

Pugh:       Officer?  
Officer Lopez: Yes, sir.  
Pugh:       I'm going to be honest, sir; I got stuff in the car, man.  
Officer Lopez: What do you got in the car?  
Pugh:       I got drugs in the car, and I got a small handgun.

Officer Lopez radioed Detective Rios and informed him of Pugh's statements. Prior to this exchange, Pugh had not been read his *Miranda* warnings. Based on Pugh's statements, Detective Rios searched the car and found the drugs and handgun.

Pugh filed a motion to suppress claiming his statement regarding the drugs and handgun being in the car was the result of custodial interrogation, and he had not been read his *Miranda* warnings prior to making the statement. After a hearing, the trial court denied the motion.

## STANDARD OF REVIEW

"We review a trial court's ruling on a motion to suppress under a bifurcated standard of review; fact findings are reviewed for an abuse of discretion, and applications of law are reviewed de novo." *State v. Ruiz*, 581 S.W.3d 782, 785 (Tex. Crim. App. 2019). In this case, the factual circumstances under which Pugh made his statement are undisputed. The only evidence presented

at the hearing on the motion to suppress was the video recording of the exchange between Pugh and Officer Lopez. No testimony was presented, and it was undisputed that Pugh was not read his *Miranda* warnings before Officer Lopez asked him “What do you got in the car?” Accordingly, “we are presented only with a legal issue.” *Id.*

### DISCUSSION

“The *Miranda* rule generally prohibits the admission into evidence of statements made in response to custodial interrogation when the suspect has not been advised of certain warnings (including that the suspect has the right to remain silent and the right to counsel).” *State v. Cruz*, 461 S.W.3d 531, 536 (Tex. Crim. App. 2015). “Failure to administer *Miranda* warnings creates a presumption of compulsion.” *Oregon v. Elstad*, 470 U.S. 298, 306 (1985). “Consequently, unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*.” *Id.* at 307. “A *Miranda* violation does not constitute *coercion* but rather affords a bright-line, legal presumption of coercion, requiring suppression of all unwarned statements.” *Id.* at 306 n.1 (emphasis in original). “Thus, in the individual case, *Miranda*’s preventive medicine provides a remedy even to the defendant who has suffered no identifiable constitutional harm.” *Id.* at 307.

“This is not to say, however, that all statements obtained by the police after a person has been taken into custody are to be considered the product of interrogation.” *Rhode Island v. Innis*, 446 U.S. 291, 299 (1980). “In the *Miranda* context, ‘interrogation’ means ‘any words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response from the suspect.’” *Cruz*, 461 S.W.3d 536 (quoting *Innis*, 446 U.S. at 300-01). Thus, interrogation includes both “express questioning [and] its functional equivalents.” *See Innis*, 446 U.S. at 300-01.

“A determination of whether or not an interrogation occurred focuses on the perceptions of the suspect, not the intent of police.” *Xu v. State*, 191 S.W.3d 210, 215 (Tex. App.—San Antonio 2005, no pet.) (citing *Innis*, 446 U.S. at 301). “However, the police cannot be held responsible for the unforeseen results of their actions and words.” *Id.* (citing *Innis*, 446 U.S. at 301-02). “Thus, interrogation can only extend to words and actions of police officers that they ‘should have known’ would likely elicit an incriminating response.” *Id.*

In this case, Pugh told the officer he “was going to be honest with” him and that he had “stuff in the car.” Based on this statement, Officer Lopez should have known Pugh was going to make some type of incriminating statement, since he “was going to be honest with him” about the “stuff” he had in the car. As a result, Officer Lopez should have known asking Pugh what he had in the car would likely elicit an incriminating response. Therefore, because Pugh’s statement was the result of custodial interrogation, the trial court erred in denying the motion to suppress the statement.<sup>1</sup>

“Because the alleged error is constitutional in magnitude, we conduct our assessment of harm using the standard set forth in Rule 44.2(a) of the Rules of Appellate Procedure.” *Lopez v. State*, 582 S.W.3d 377, 389 (Tex. App.—San Antonio 2018, pet. ref’d). Rule 44.2(a) provides that an appellate court “must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.” TEX. R. APP. P. 44.2(a). In conducting a harm analysis of an error involving a constitutional protection, “the question for the reviewing court is not whether the jury verdict was

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<sup>1</sup> In its brief, the only case cited by the State in analyzing Pugh’s statement was *England v. State*, No. 12-01-00057-CR, 2002 WL 220861 (Tex. App.—Tyler Feb. 13, 2002, no pet.) (not designated for publication). In *England*, however, the appellant invoked his right to an attorney. 2002 WL 220861, at \*1. The issue presented on appeal was whether the State established the appellant waived the right to counsel he previously invoked by initiating further conversation with the police. *Id.* Accordingly, the issue presented in *England* is readily distinguishable from the issue presented in the instant case.

supported by the evidence. Instead, the question is the likelihood that the constitutional error was actually a contributing factor in the jury's deliberations in arriving at that verdict." *Scott v. State*, 227 S.W.3d 670, 690 (Tex. Crim. App. 2007); *see also Snowden v. State*, 353 S.W.3d 815, 822 (Tex. Crim. App. 2011) (noting considerations in deciding whether constitutional error resulted in harm include "the nature of the error (*e.g.*, erroneous admission or exclusion of evidence, objectionable jury argument, *etc.*), whether it was emphasized by the State, the probable implications of the error, and the weight the jury would likely have assigned to it in the course of its deliberations").

In this case, Pugh's statement to Officer Lopez that he had drugs and a handgun in his wife's car led to the search of the car. Other than the expert's testimony identifying the drug recovered as heroin, the only witnesses to testify were Detective Rios and Officer Lopez, and both witnesses testified regarding the statement. Finally, during closing argument, the State repeatedly referred to the statement as evidence establishing Pugh's possession of the heroin. Accordingly, we hold the erroneous admission of Pugh's statement likely was a contributing factor in the jury's deliberations in arriving at a guilty verdict and, therefore, resulted in harm.

### CONCLUSION

The trial court's judgment is reversed, and the cause is remanded to the trial court for further proceedings consistent with this opinion.

Sandee Bryan Marion, Chief Justice

DO NOT PUBLISH

## **APPENDIX B**



**Fourth Court of Appeals  
San Antonio, Texas**

May 20, 2020

No. 04-19-00516-CR

Kedreen Marque **PUGH**

v.

The **STATE** of Texas

From the 187th Judicial District Court, Bexar County, Texas  
Trial Court No. 2018CR6053  
Honorable Stephanie R. Boyd, Judge Presiding

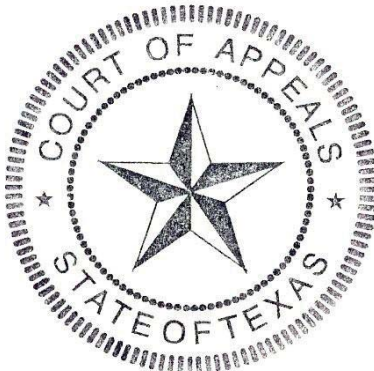
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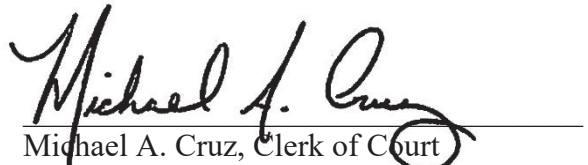
Sitting: Sandee Bryan Marion, Chief Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

The State's motion for rehearing is DENIED.

  
Sandee Bryan Marion, Chief Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 20th day of May, 2020.



  
Michael A. Cruz, Clerk of Court

### **Automated Certificate of eService**

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Jennifer RossmeierBrown		jennifer.brown@bexar.org	8/3/2020 4:09:00 PM	SENT

Associated Case Party: KedreenMarquePugh

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Debra L. Parker	794112	debraparkerlaw@gmail.com	8/3/2020 4:09:00 PM	SENT

Case Contacts

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Stacey Soule		Stacey.Soule@SPA.texas.gov	8/3/2020 4:09:00 PM	SENT